

1  
2  
3  
4  
5  
6  
7  
8 **UNITED STATES DISTRICT COURT**  
9 **SOUTHERN DISTRICT OF CALIFORNIA**  
10

11 JESSE GARDUNO,

12 Plaintiff,

13 vs.

13 EDGAR ROGEL; J. DUENAS; L.  
14 CESENA; R. FRÉGOSO; and  
15 SHEILA NAGARAJ,

15 Defendants.

CASE NO. 13cv19-WQH-BGS

**ORDER**

16 HAYES, Judge:

17 On January 3, 2013, Plaintiff initiated this action by filing a Complaint  
18 containing *Bivens* and RICO claims against all Defendants. (ECF No. 1). Plaintiff  
19 alleged that “Defendants exhibited a reckless indifference and wanton disregard for  
20 [his] First, Fourth, and Fifth Amendment rights” by stopping him at the border and  
21 subsequently bringing criminal charges against him. *Id.* at 3.

22 On July 16, 2013, Defendants filed the Motion to Dismiss, which stated: “Federal  
23 Defendants ... bring its motion to dismiss the complaint pursuant to Rule 12(b)(6) of the  
24 Federal Rules of Civil Procedure.” (ECF No. 7 at 1). In the Memorandum of Points  
25 and Authorities, Defendants moved for dismissal of the RICO claim (claim two) as to  
26 all Defendants, and dismissal of the *Bivens* claim (claim one) only as to Defendant  
27 AUSA Naganaj. (ECF No. 7-1 at 4).

28 Plaintiff did not file an opposition or otherwise respond to the Motion to Dismiss.


1 On August 21, 2013, the Court issued an Order granting Defendants' unopposed  
2 Motion to Dismiss, and dismissing the Complaint without prejudice. (ECF No. 8).  
3 Later that day, the Clerk of the Court issued Judgment in favor of Defendants. (ECF  
4 No. 9).

5 Federal Rule of Civil Procedure 60(a) provides: "The court may correct a clerical  
6 mistake or a mistake arising from oversight or omission whenever one is found in a  
7 judgment, order, or other part of the record. The court may do so on motion or on its  
8 own, with or without notice." Fed. R. Civ. P. 60(a).

9 Pursuant to the unopposed Motion to Dismiss filed by Defendants and Rule  
10 60(a), the Court hereby **VACATES** the August 21, 2013 Judgment (ECF No. 9). The  
11 Clerk of the Court shall reopen the case. The August 21, 2013 Order (ECF No 8) is  
12 amended as follows: "IT IS HEREBY ORDERED that the Motion to Dismiss filed by  
13 Defendants (ECF No. 7) is GRANTED. Claim one of the Complaint is DISMISSED  
14 without prejudice as to Defendant AUSA Nagaraj. Claim two of the Complaint is  
15 DISMISSED without prejudice as to all Defendants."

16 **IT IS SO ORDERED.**

17 DATED: August 26, 2013

18   
19 **WILLIAM Q. HAYES**  
20 United States District Judge  
21  
22  
23  
24  
25  
26  
27  
28